

### **REMARKS**

Claims 1-2, 5-23, and 37-50 are pending in the application. Claims 37 and 45 are amended. According to the Restriction Requirement mailed November 28, 2007, the pending claims are subject to a restriction requirement. The Restriction Requirement has identified two inventions among the claims, as follows:

Group I, including claims 1-2 and 5-23; and

Group II, including claims 37-50.

As stated above, the Applicants hereby elect, with traverse, Group I, including claims 1-2 and 5-23 in response to the Restriction Requirement dated November 28, 2007. The Applicants traverse the Restriction Requirement and request reconsideration thereof such that Groups I and II are combined for prosecution in this application.

The Restriction Requirement restricts the claim Groups I and II between combination and subcombination inventions. To support such a restriction, "both two-way distinctness and reasons for insisting on restriction are necessary, i.e., there would be a serious burden if restriction were not required as evidenced by separate classification, status, or field of search." MPEP § 806.05(c). The Applicants respectfully submit that, under this dual-requirement standard, the claim Groups I and II are improperly restricted.

For instance, there would not be a serious burden on the Examiner if restriction is not required because the claims are sufficiently similar that the Examiner would not be required to search "by separate classification, status, or field of search." Indeed, the Restriction Requirement did not make any such claim; it merely stated that based on "the reasons given above [ ] there would be a serious burden on the examiner." The Applicants must assume that "the reasons given above" include the fact that the Restriction Requirements appears to show two-way distinctiveness. Showing one of the requirements, however, does not necessarily show the other.

The Applicants also amend claims 37 and 45 such as to overcome the two-way distinctness requirement. Note that claims 37, 44, and 45 all include the claim features of Group I. The feature noted in the Restriction Requirement as a subcombination in Group I was "if a tie condition makes a desired rank unavailable for a respective search listing, incrementing a bid amount for the respective search listing." This feature is now included in claims 37, 44, and 45, varying only to the extent required to be consistent with other claim terms. The corresponding language includes:

**Claim 37:**

if a tie condition makes a desired rank unavailable for a respective search listing, incrementing a bid amount for the respective search listing;

**Claim 44:**

the second program code further to determine if a tie condition makes a desired rank unavailable for a respective selected search listing, and if so, to increment a bid amount for the respective selected search listing;

**Claim 45:**

if a tie condition in the rank order makes a desired rank unavailable for a specified search listing, incrementing a bid amount for the specified search listing.

If the combination claims are amended after a restriction requirement such that each combination, as claimed, requires all the limitations of the subcombination as claimed, . . . the restriction requirement between the combination and subcombination should not be maintained.

MPEP § 806.05(c).

Accordingly, because with the current amendments both requirements to make a combination/subcombination restriction are not met, the Applicants respectfully request that the restriction requirement of Groups I and II be withdrawn.

**Conclusion**

With this response, the application is believed to be in condition for allowance. The Applicants, nevertheless, request a telephone interview with the Examiner to expedite discussion of the details of how the claims distinguish over the cited references

Application No. 09/993,926  
Amendment dated: December 11, 2007  
Reply to office action dated: November 28, 2007

Attorney Docket No. 9623/381  
(Y00437US00)

and to clarify any issues that may remain, after this response, an obstacle to allowance of the claims.

Respectfully submitted,

/Nathan O. Greene/  
Nathan O. Greene  
Registration No. 56,956  
Attorney for Applicants

December 11, 2007  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(801) 355-7900